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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/782,707   | 02/18/2004  | Gregory J. Colibert  | 21662.NP            | 5589             |
| 20551  | 7590        | 07/29/2005           | EXAMINER            |                  |
| THORPE NORTH & WESTERN, LLP.<br>8180 SOUTH 700 EAST, SUITE 200<br>P.O. BOX 1219<br>SANDY, UT 84070 |             |                      | NGUYEN, MICHAEL T   |                  |
|  |             | ART UNIT             |                     | PAPER NUMBER     |
|  |             | 3611                 |                     |                  |

DATE MAILED: 07/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |
|------------------------------|------------------------|---------------------|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |
|                              | 10/782,707             | COLIBERT ET AL.     |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |
|                              | Michael T. Nguyen      | 3611                |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 18 February 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 12-19 is/are withdrawn from consideration.
- 5) Claim(s) 1-3 and 6-10 is/are allowed.
- 6) Claim(s) 11 is/are rejected.
- 7) Claim(s) 4 and 5 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 18 February 2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____.   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____.                                   |

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-11, drawn to a displaceable ball hitch assembly apparatus, classified in class 280, subclass 478.1.
  - II. Claims 12-19, drawn to a method of using a displaceable ball hitch assembly apparatus, classified in class 280, subclass 425.2.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the process as claimed can be practiced with another materially different product such as a displaceable ball hitch assembly apparatus without a gooseneck type assembly as per claim 13 or a gate member as per claim 12 coupled to the apparatus.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Vaughn North on 7/20/2005 a provisional election was made with traverse to prosecute the invention of the displaceable ball hitch

Art Unit: 3611

assembly apparatus, claims 1-11. Affirmation of this election must be made by applicant in replying to this Office action. Claims 12-19 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Specification***

5. The disclosure is objected to because of the following informalities: On the title page, "Displacable" should be replaced with "Displaceable".

Appropriate correction is required.

***Claim Objections***

6. Claims 4 and 5 are objected to because of the following informalities: On page 8 lines 27 and 30, "axel" should be replaced with "axle". Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claim 11 is rejected under 35 U.S.C. 102(e) as being anticipated by Shilitz et al (U.S. Patent No. 6634666 B2). Shilitz et al discloses a platform track (4) defining a track space therein, a displaceable platform (14) configured to be positioned in the track space (15) and including a ball hitch coupled thereto, a driving mechanism (50) configured to be operatively coupled to the displaceable platform and configured to facilitate displacement of the displaceable platform, and a switch control configured to be operatively coupled to the driving mechanism and operable to control activation of the driving mechanism from a cab of the truck.

***Allowable Subject Matter***

9. Claims 1-3, and 6-10 are allowed.
10. Claims 4 and 5 would be allowed if corrected.

***Conclusion***

11. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael T. Nguyen whose telephone number is (571) 272-1361. The examiner can normally be reached on 7-5:30 M - Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (571) 272-6651. The fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael T Nguyen  
Examiner  
Art Unit 3611

MTN  
7/20/2005

AVRAHAM LERNER  
PRIMARY EXAMINER  
*A. lerner* 7/25/05